

Solutions and issues with owning BVI company shares personally

Article by Stephen Abletshauser

May 2020

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Issue

When any shareholder of a BVI company dies, unfortunately, the executors or personal representatives ('PRs') of that person's estate may not simply rely on a grant of probate or something similar where the deceased's estate is being settled.

Controversially, some executors take a risk and distribute property without a BVI grant of representation however any discerning registered agent must reject any such attempts.

This involves a drawn out, expensive and perhaps stressful process devolving the shares in BVI courts. The time taken for the BVI legal process, when the shares are in limbo, might negatively impact the smooth functioning of the company's underlying business and assets.

Law and context

Unfortunately, the PRs or their lawyers need to apply for a grant of representation in the BVI to administer the shareholder's estate. The registered agent of the BVI company may not simply rely on a grant from the jurisdiction in which the deceased was domiciled, i.e. on the basis that the succession to a deceased's movable property is, as a general rule, governed by the laws of the jurisdiction in which that person died was domiciled.

Why is this? The effect of section 245 of the BVI Business Companies Act (2004, as amended) is that succession to movable property in the BVI will be determined by the BVI and not by the usual application of the laws of the deceased's last domicile.

S245 BVI BCA

Section 245 of the Business Companies Act 2004 states that when deciding matters relating to title and jurisdiction, the BVI is the situs of the ownership of a company's shares, debt obligations or other securities.

Therefore, without a local grant of representation, the PR appointed by a foreign Government and anyone else who assists in transferring property to such PR or beneficiaries (such as a registered agent or the deceased's lawyer) risks liability as executor for intermeddling (or *de son tort*).

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Cost is high for a simple process and as often unexpected, leads to further stress

The cost of any such application usually totals from USD\$10,000 and it is good business for BVI law firms as there are a few hundred thousand active BVI companies.

What can you do?

Any shareholder or, more likely adviser, should act now and discuss with their clients the possible solutions which do work.

These include:

- (1) use of trusts
- (2) co-ownership,
- (3) Company succession Contract or
- (4) structuring the company with different classes of shares.

Trusts may be unwieldy for some clients, or cause KYC/compliance issues with managing the company but are often excellent long term planning vehicles.

Clients not accustomed to relinquishing ownership of their companies and assets, especially from countries not familiar with trusts (think Russia & CIS, China, Latin America, South East Asia, Europe), could instruct us to structure their company.

We might recommend issuing various classes of shares which will allow advantages such as flexibility in the present and future, akin to a trust, perhaps without the possibility of longevity of a trust, however with easier manoeuvrability in the shorter term.

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